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09/754,026	01/03/2001	David J. Baer	1443.006US1	2031

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EXAMINER

PIERCE, JEREMY R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 06/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/754,026

Applicant(s)

BAER ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment A has been filed on April 14, 2003 as Paper No. 13. Claims 1-30 have been cancelled. Claim 40 has been amended. New claims 45-56 have been added. The amendment is sufficient to overcome the 35 USC 112 rejection set forth in section 3 of the last Office Action. Claims 31-56 are currently pending.

### ***Claim Rejections - 35 USC § 102/103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 31-41, 43, 44, 52, and 54 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jackson et al. (U.S. Patent No. 4,741,944).

Jackson et al. disclose a wet-wipe that includes an elastic nonwoven web joined to a gathered non-elastic web of spunbonded fibers (column 4, lines 51-64). Jackson et al. disclose the wet-wipe is stretched in the direction of the elasticity upon removal of the wipe from the container (column 6, lines 6-24). Although Jackson et al. do not explicitly teach the limitations that the thickness after stretching would be greater than the thickness before stretching, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. an elastic nonwoven web and a gathered non-elastic nonwoven web) and

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in the similar production steps (i.e. bonded so that the non-elastic web is gathered when the composite is relaxed) used to produce the wet-wipe. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the dispensing arrangement process disclosed by Jackson et al would obviously have provided the claimed thickness change. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. With regard to claims 32 and 34, the degree to which the composite is stretched coming from the container is not disclosed. However, it would likely be inherent that it would stretch between 5 and 30% its original length as it comes out of the container or during its every day use. With regard to claims 33, 35, and 54, the amount of thickness gain and density loss would be inherent or obviously provided for the same reasons set forth above. With regard to claims 37, 40, 41, and 43, Jackson et al. do not provide density, cup crush, or tensile strength values of the web. As stated before, since Jackson et al. disclose similar materials made with a similar process to make a similar product, the claimed properties would likely be inherent in the composite of Jackson et al. If not inherent, density, cup crush, and tensile strength are all properties that are known to be adjustable in the art of making nonwoven fabrics. It would have been obvious to one having ordinary skill in the art to adjust the density, cup crush, and tensile strength of the wipe of Jackson et al. in order to obtain the desired loft, flexibility, and strength in the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With

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regard to claims 38 and 39, Jackson et al. disclose using preservatives, fragrances, emollients, humectants, detergents, and soaps (column 4, lines 59-60). With regard to claim 52, Jackson et al. disclose the liquid to comprise up to about 160 percent by weight (column 14, line 36).

***Claim Rejections - 35 USC § 103***

4. Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al.

With regard to claim 55, Jackson et al. do not disclose a thickness of the composite after it is removed from the container. It would have been obvious to one having ordinary skill in the art to make the wet-wipe within the range of 1.0 mm to 1.7 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). With regard to claim 56, Jackson et al. do not disclose a thickness of the composite while it is still in the container. It would have been obvious to one having ordinary skill in the art to make the wet-wipe with a thickness of less than 0.9 mm, since such a modification would have involved a mere change in the size of a component.

5. Claims 31-37, 40, 41, 43-47, and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman (U.S. Patent No. 4,606,964) in view of Jackson et al.

Wideman disclose a web of elastic material bonded to at least one gatherable web. Wideman discloses the composite may be used as a baby wipe (column 8, lines

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13-14), but do not disclose the wipe to have different modes or to be contained in any manner. Jackson et al. disclose a wet-wipe container where the wet-wipes are stretched in the direction of the elasticity upon removal of the wipe from the container (column 6, lines 6-24). It would have been obvious to one having ordinary skill in the art to contain the wet-wipes disclosed by Wideman in the manner disclosed by Jackson et al. in order to give the user a positive indication of removal, as taught by Jackson et al. Although Wideman does not explicitly teach the limitations that the thickness after stretching would be greater than the thickness before stretching, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. an elastic nonwoven web and a gathered non-elastic nonwoven web) and in the similar production steps (i.e. bonded so that the non-elastic web is gathered when the composite is relaxed) used to produce the wet-wipe. The burden is upon the Applicant to prove otherwise. With regard to claims 32 and 34, the degree to which the composite is stretched coming from the container is not disclosed. However, it would likely be inherent that it would stretch between 5 and 30% its original length as it comes out of the container or during its every day use. With regard to claims 33, 35, and 54, the amount of thickness gain and density loss would be inherent or obviously provided for the same reasons set forth above. With regard to claims 37, 40, 41, and 43, Wideman does not provide density, cup crush, or tensile strength values of the web. As stated before, since Wideman discloses similar materials made with a similar process to make a similar product, the claimed properties would likely be inherent in the composite of Wideman. If not inherent, density, cup

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crush, and tensile strength are all properties that are known to be adjustable in the art of making nonwoven fabrics. It would have been obvious to one having ordinary skill in the art to adjust the density, cup crush, and tensile strength of the wipe of Wideman in order to obtain the desired loft, flexibility, and strength in the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to claims 45-47, Wideman discloses the gatherable web may be made from combinations of natural and synthetic fibers (column 6, lines 14-34). With regard to claim 55, Wideman does not disclose a thickness of the composite after it is removed from the container. It would have been obvious to one having ordinary skill in the art to make the wet-wipe within the range of 1.0 mm to 1.7 mm, since such a modification would have involved a mere change in the size of a component. With regard to claim 56, Wideman does not disclose a thickness of the composite while it is still in the container. It would have been obvious to one having ordinary skill in the art to make the wet-wipe with a thickness of less than 0.9 mm, since such a modification would have involved a mere change in the size of a component.

6. Claims 38, 39, and 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman in view of Jackson et al. and further in view of Buczwinski et al. (U.S. Patent No. 5,785,179).

With regard to claims 38, 39, 48, 49, 52, and 53, Wideman does not disclose the necessary information to impregnate the baby wipe with cleaning solution. Buczwinski et al. disclose baby wipes are impregnated with water, emollient, surfactant, and preservative in an amount of between 150 and 600 percent by weight of the wipe

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(column 5, lines 28-45). It would have been obvious to one having ordinary skill in the art to impregnate the wipe of Wideman with between 150 and 600 percent by weight of cleaning solution in order to use the composite as a baby wipe, as taught by Buczwinski et al. With regard to claims 50 and 51, Wideman does not disclose an appropriate ratio of natural to synthetic fibers. Buczwinski et al. disclose that coform webs used as baby wipes typically comprise between 30 and 40 percent by weight of synthetic fibers (column 5, lines 23-27). It would have been obvious to one having ordinary skill in the art to use between 60 and 70 percent by weight natural fibers in the non-elastic layer of Wideman in order to better use the composite as a baby wipe, as taught by Buczwinski et al.

7. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Wright (U.S. Patent No. 5,385,775).

Jackson et al. do not disclose the elastic layer to have its fibers arranged in a substantially parallel configuration. Wright teaches that using parallel elastic fibers in a composite gatherable web offers improved tenacity in one direction (Abstract). It would have been obvious to one having ordinary skill in the art to use substantially parallel fibers in the elastic layer of Jackson et al. in order to provide improved tenacity in the stretching direction with the gathers being aligned in a parallel fashion (column 6, line 4).

8. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman in view of Jackson et al. and further in view of Wright.



Wideman does not disclose the elastic layer to have its fibers arranged in a substantially parallel configuration. Wright teaches that using parallel elastic fibers in a composite gatherable web offers improved tenacity in one direction (Abstract). It would have been obvious to one having ordinary skill in the art to use substantially parallel fibers in the elastic layer of Wideman in order to provide improved tenacity in the stretching direction with the gathers being aligned in a parallel fashion (column 6, line 4).

### ***Response to Arguments***

9. Applicant's arguments filed in Paper No. 13 have been fully considered but they are not persuasive.
10. Applicant argues that since Jackson does not explicitly teach the feature of the thickness after stretching would be greater than the thickness before stretching, an anticipation rejection cannot be made. However, the claims are claiming a property of a wet-wipe. A prior art reference does not need to specifically describe all the potential properties that a material might have. The Examiner asserts that since the reference meets all the structural limitations of the claim (an elastic web material bonded to a non-elastic material), and the reference teaches the same process for making the material (gathering the non-elastic web between bond points to the elastic web), and the reference is within the same art (wet-wipes) as the claims, that the properties exhibited by the structure would be inherent. The technical reasons for establishing inherency are the fact that similar materials are used in similar production steps to create a similar

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product. The burden is now on Applicant to prove that the material of Jackson cannot meet the claimed properties.

11. Applicant argues that if the gathers of Jackson were compressed to a reduced height, then the gathers would not necessarily engage the gathers of the following wipe during removal. However, the gathers may be engaged to the gathers of the following wipe before compression takes place. This does not prove that the wipe of Jackson is not compressed, thus giving an increase in thickness in the final mode.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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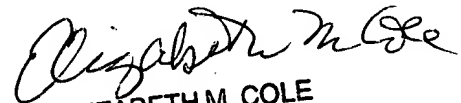
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce  
Examiner  
Art Unit 1771



ELIZABETH M. COLE  
PRIMARY EXAMINER

June 9, 2003